

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

SHOOK, INC. HEAVY &
ENVIRONMENTAL DIVISION,

Plaintiff,

vs.

CITY OF MOUNDSVILLE
WATER BOARD,

Defendant.

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Case No. 3:09cv00210

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District Judge Walter Herbert Rice
Magistrate Judge Sharon L. Ovington

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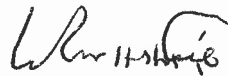
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DECISION AND ENTRY ADOPTING Report and Recommendations filed on February 12, 2010 (Doc. #22); GRANTING, IN PART, Defendant Moundsville's Motion to Dismiss under Fed. R. Civ. P. 12(b)(2) (Doc. #4) to the extent Plaintiff Shook has not met its burden of showing that the exercise of personal jurisdiction over Defendant Moundsville comports with the Due Process Clause of the Fourteenth Amendment; DENYING, IN PART, Defendant Moundsville's Motion to Dismiss under Fed. R. Civ. P. 12(b)(2) (Doc. #4) to the extent it seeks an Order dismissing this case and, instead, TRANSFERRING venue to the United States District Court for the Northern District of West Virginia under 28 U.S.C. §1406(a) and 28 U.S.C. §1631; GRANTING Defendant Moundsville's Alternative Motion to Transfer Venue (Doc. #4); DIRECTING the Clerk of Court to TRANSFER this case to the United States District Court for the Northern District of West Virginia in Wheeling, West Virginia under 28 U.S.C. §1404(a); and TERMINATING the case on the docket of this Court

The Court has conducted a de novo review of the Report and Recommendations of United States Magistrate Judge Sharon L. Ovington (Doc. #22), to whom this case was originally referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby **ADOPTS** said Report and Recommendations. It is therefore **ORDERED** that:

1. The Report and Recommendations filed on February 12, 2010 (Doc. #22) is ADOPTED in full;

2. Defendant Moundsville's Motion to Dismiss under Fed. R. Civ. P. 12(b)(2) (Doc. #4) is GRANTED, in part, to the extent Plaintiff Shook has not met its burden of showing that the exercise of personal jurisdiction over Defendant Moundsville comports with the Due Process Clause of the Fourteenth Amendment;
3. Defendant Moundsville's Motion to Dismiss under Fed. R. Civ. P. 12(b)(2) (Doc. #4) is DENIED, in part, to the extent it seeks an Order dismissing this case. Rather than dismissing this case, venue is TRANSFERRED to the United States District Court for the Northern District of West Virginia under 28 U.S.C. §1406(a) and 28 U.S.C. §1631;
4. Defendant Moundsville's Alternative Motion to Transfer Venue (Doc. #4) of this case to the United States District Court for the Northern District of West Virginia under 28 U.S.C. §1404(a) is likewise GRANTED;
5. The Clerk of Court is DIRECTED to transfer this case to the United States District Court for the Northern District of West Virginia in Wheeling, West Virginia ; and
6. The case is terminated on the docket of this Court.



Walter Herbert Rice
United States District Judge